

This appeal concerns claimant's present request of post-award medical treatment for her left ankle and left knee. On January 9, 2002, claimant fell at work and fractured her left ankle. By this Board's Order dated August 20, 2003, claimant was awarded permanent disability benefits for an eight percent functional impairment to the left lower extremity.

In the July 14, 2008, Post Award Medical Award, Judge Klein ordered respondent to provide claimant with the names of three physicians from which claimant would select a treating physician. The Judge also approved claimant's request for \$825 in attorney fees.

Respondent contends Judge Klein erred. Respondent argues claimant failed to prove her present need for medical treatment is directly and naturally related to her January 2002 accident. In addition, respondent argues claimant failed to present any medical expert opinion, which is required to determine what symptoms may be related to her 2002 accident as opposed to work she later performed for another employer and her activities of day-to-day living. Finally, respondent argues the Board should deny claimant's request of attorney fees as the evidence fails to prove (1) claimant needs medical treatment, (2) there is medical treatment that would help her, and (3) the requested treatment is related to her work injury with respondent. Accordingly, respondent requests the Board to deny claimant's request for medical treatment and attorney fees.

Claimant contends the July 14, 2008, Post Award Medical Award should be affirmed. Claimant argues the evidence is uncontradicted that since her fall in January 2002 she has experienced increasing pain in her left lower extremity that is the natural result of her accident. And the 2½ to 3 months she worked in pain while employed by a deli merely confirmed she could not perform a job requiring her to stand all day. In summary, claimant argues her present need for medical treatment is related to the January 2002 accident she sustained while working for respondent.

The only issue before the Board on this appeal is whether claimant has proven her present need for medical treatment is directly related to her January 9, 2002, accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, the Board finds and concludes:

Claimant now seeks additional medical treatment for symptoms she contends are related to her January 9, 2002, accident. On that day she fell and broke her left ankle while working for respondent on its housekeeping staff. Claimant testified at her January 2003 regular hearing that she developed left knee pain after her accident when she was placed in a walking cast and resumed working for respondent. At that hearing claimant also testified she was continuing to experience numbness that would go up into her leg depending upon her activities.

In its August 20, 2003, Order the Board averaged the functional impairment ratings provided by Dr. Pedro A. Murati and Dr. Thomas W. Kneidel and awarded claimant permanent disability benefits for an eight percent lower extremity impairment.

In October 2003, claimant requested respondent to provide additional medical treatment. Respondent sent claimant to a Dr. Howell, who prescribed a brace or walking cast. But claimant's symptoms worsened. Claimant testified, in part:

Q. (Mr. Lee) Well, according to his [Dr. Howell's] records he attempted to put you in to a walking cast.

A. (Claimant) Right. He put me in a walking cast, sent me back to work. I told him I couldn't work, he told me you are fine, you can walk in the walking cast. I kept complaining about it and I called a few times and he said I could work. I couldn't work, I couldn't walk.

Q. According to his last note you last saw him on May 25th, 2004.

A. Right. So I just kind of left it alone thinking sooner or later it would get better and it got worse.¹

In January 2006, claimant was laid off from her housekeeping job as respondent's business had slowed. After drawing unemployment for a time, claimant began working for a deli. The record is not clear when she commenced that job. Nonetheless, due to her left leg pain claimant could not tolerate standing at the deli and she quit after approximately 2½ to 3 months. Claimant has not been employed since.

Claimant testified she is now seeking additional medical treatment as she experiences problems walking due to her left ankle and left knee. She also testified that she has not done anything to further injure her left ankle or knee. Moreover, she does not believe her work in the deli caused additional injury. She testified, in part:

Q. (Mr. Lee) You indicated that you couldn't handle being on your feet all the time when you went to work for McAlister['s] Deli?

A. (Claimant) Correct.

Q. Did that job make those conditions [left ankle and left knee] worse?

A. No, they were like that before I got there, I just had to work.

Q. It was just something you couldn't do before you went to work at McAlister's Deli, but once you got there you knew you couldn't do it then?

A. Right.²

¹ P.A.H. Trans. at 8, 9.

² *Id.* at 11.

Claimant did not initiate a workers compensation claim against the deli.

Claimant testified that about a month before the January 2008 post-award hearing she went to the KU Medical Center Clinic in Wichita and underwent x-rays. She was told she had arthritis. Claimant also testified she had gone to the Grace Med Clinic in Wichita and was told she had arthritis in her left knee and ankle.

Neither party presented the opinion from a medical expert in this post-award proceeding. Claimant's attorney argued that claimant lacked the funds to hire an expert. Respondent requested and was granted additional time to submit evidence, but then did not present any evidence. Consequently, aside from claimant's testimony regarding what she has been told, the only medical evidence in the record is that from Dr. Murati and Dr. Kneidel, which was taken in January 2003. And that evidence has little relevance as it does not address claimant's present need for medical treatment.

In short, the Board is left with claimant's testimony regarding the history of her symptoms in the left lower extremity, how her symptoms were affected by her work at the deli, and the information she was given by the Grace Med Clinic and the KU Medical Center Clinic. That testimony is credible. Accordingly, claimant has established that she has experienced symptoms in her left ankle and left knee since her January 2002 accident and that those symptoms have progressively worsened such that she is having difficulty walking. Claimant has been diagnosed with arthritis, which tends to support her contention that her present symptoms are directly related to her January 2002 accident.

Whether claimant's current condition and need for medical treatment is due to the work-related accident is a question of fact. In a post-award medical proceeding, an award for additional medical treatment can be made if it is found the medical care is necessary to cure or relieve the effects of the accidental injury that was the subject of the underlying award.³ And an injured worker's testimony alone is sufficient evidence of his or her own physical condition.⁴

In conclusion, the Board affirms the Judge's implicit finding that claimant's present symptoms are related to her January 2002 accident. Moreover, the Board affirms the Judge's conclusion that respondent should provide claimant with the names of three doctors from which claimant is to choose a treating doctor.

³ K.S.A. 44-510k(a).

⁴ *Graff v. Trans World Airlines*, 267 Kan. 854, 864, 983 P.2d 258 (1999); *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, Syl. ¶ 2, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001); *George v. Snip N Clip*, No. 256,500, 2002 WL 31602580 (Kan. WCAB Oct. 31, 2002); *Lee v. Larned State Hospital*, Nos. 241,965 & 242,026, 2003 WL 21396812 (Kan. WCAB May 23, 2003); *Cable v. Century Concrete, Inc.*, No. 1,027,595, 2007 WL 4661998 (Kan. WCAB Dec. 14, 2007).

Next, the Board affirms the award of attorney fees. The post-award medical statute provides that the administrative law judge may award attorney fees and costs on the claimant's behalf. Respondent challenged the fees awarded claimant on the basis that claimant had failed to prove the relationship between the requested medical treatment and her work-related accident. As indicated above, the Board has rejected that argument. The Board affirms the award of attorney fees.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁵ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board affirms the July 14, 2008, Post Award Medical Award entered by Judge Klein.

IT IS SO ORDERED.

Dated this ____ day of October, 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge

⁵ K.S.A. 2007 Supp. 44-555c(k).